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**SENATE BILL 1060**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Richard C. Martinez**

**AN ACT**

**RELATING TO ECONOMIC DEVELOPMENT; PROTECTING CERTAIN NEW MEXICO  
SMALL BUSINESSES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 13-1-21 NMSA 1978 (being Laws 1979,  
Chapter 72, Section 1, as amended) is amended to read:**

**"13-1-21. APPLICATION OF PREFERENCES. --**

**A. For the purposes of this section:**

**(1) "resident business" means a New Mexico  
resident business or a New York state business enterprise;**

**(2) "New Mexico resident business" means a  
business that is authorized to do and is doing business under  
the laws of this state and:**

**(a) that maintains its principal place  
of business in the state;**

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1 (b) has staffed an office and has paid  
2 applicable state taxes for two years prior to the awarding of  
3 the bid and has five or more employees who are residents of the  
4 state; or

5 (c) is an affiliate of a business that  
6 meets the requirements of Subparagraph (a) or (b) of this  
7 paragraph. As used in this section, "affiliate" means an  
8 entity that directly or indirectly through one or more  
9 intermediaries controls, is controlled by or is under common  
10 control with the qualifying business through ownership of  
11 voting securities representing a majority of the total voting  
12 power of the entity;

13 (3) "New York state business enterprise" means  
14 a business enterprise, including a sole proprietorship,  
15 partnership or corporation, that offers for sale or lease or  
16 other form of exchange, goods or commodities that are  
17 substantially manufactured, produced or assembled in New York  
18 state, or services, other than construction services, that are  
19 substantially performed within New York state. For purposes of  
20 construction services, a New York state business enterprise  
21 means a business enterprise, including a sole proprietorship,  
22 partnership or corporation, that has its principal place of  
23 business in New York state;

24 (4) "resident manufacturer" means a person who  
25 offers materials grown, produced, processed or manufactured

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1 wholly in the state; provided, however, that a  
2 New York state business enterprise shall be deemed to be a  
3 resident manufacturer solely for the purpose of evaluating the  
4 New York state business enterprise's bid against the bid of a  
5 resident manufacturer that is not a New York state business  
6 enterprise;

7 (5) "recycled content goods" means supplies  
8 and materials composed in whole or in part of recycled  
9 materials; provided that the recycled materials content meets  
10 or exceeds the minimum content standards required by bid  
11 specifications; [~~and~~]

12 (6) "virgin content goods" means supplies and  
13 materials that are wholly composed of nonrecycled materials or  
14 do not meet minimum recycled content standards required by bid  
15 specification; and

16 (7) "disadvantaged small business" means a New  
17 Mexico resident business that is owned by a woman, a military  
18 veteran, including a disabled veteran, or other minority person  
19 and that employs twenty or fewer employees.

20 B. When bids are received only from nonresident  
21 businesses and resident businesses and the lowest responsible  
22 bid is from a nonresident business, the contract shall be  
23 awarded to the resident business whose bid is nearest to the  
24 bid price of the otherwise low nonresident business bidder if  
25 the bid price of the resident bidder is made lower than the bid

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1 price of the nonresident business when multiplied by a factor  
2 of .95.

3 C. When bids are received only from nonresident  
4 businesses and resident manufacturers and the lowest  
5 responsible bid is from a nonresident business, the contract  
6 shall be awarded to the resident manufacturer whose bid is  
7 nearest to the bid price of the otherwise low nonresident  
8 business bidder if the bid price of the resident manufacturer  
9 is made lower than the bid price of the nonresident business  
10 when multiplied by a factor of .95.

11 D. When bids are received only from resident  
12 businesses and resident manufacturers and the lowest  
13 responsible bid is from a resident business, the contract shall  
14 be awarded to the resident manufacturer whose bid is nearest to  
15 the bid price of the otherwise low resident business bidder if  
16 the bid price of the resident manufacturer is made lower than  
17 the bid price of the resident business when multiplied by a  
18 factor of .95.

19 E. When bids are received from resident  
20 manufacturers, resident businesses and nonresident businesses  
21 and the lowest responsible bid is from a resident business, the  
22 contract shall be awarded to the resident manufacturer whose  
23 bid is nearest to the bid price of the otherwise low resident  
24 business bidder if the bid price of the resident manufacturer  
25 is made lower than the bid price of the resident business when

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1 multiplied by a factor of .95.

2 F. When bids are received from resident  
3 manufacturers, resident businesses and nonresident businesses  
4 and the lowest responsible bid is from a nonresident business,  
5 the contract shall be awarded to the resident manufacturer  
6 whose bid is nearest to the bid price of the otherwise low  
7 nonresident business bidder if the bid price of the resident  
8 manufacturer is evaluated as lower than the bid price of the  
9 nonresident business when multiplied by a factor of .95. If  
10 there is no resident manufacturer eligible for award under this  
11 provision, then the contract shall be awarded to the resident  
12 business whose bid is nearest to the bid price of the otherwise  
13 low nonresident business bidder if the bid price of the  
14 resident business is made lower than the bid price of the  
15 nonresident business when multiplied by a factor of .95.

16 G. When bids are received for virgin content goods  
17 only or for recycled content goods only, Subsections B through  
18 F of this section shall apply.

19 H. When bids are received for both recycled content  
20 goods and virgin content goods and the lowest responsible bid  
21 is for virgin content goods, the contract shall be awarded to:

22 (1) a resident manufacturer offering the  
23 lowest bid on recycled content goods of equal quality if the  
24 bid price of the resident manufacturer when multiplied by a  
25 factor of .90 is made lower than the otherwise low virgin

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1 content goods bid price;

2 (2) a resident business offering a bid on  
3 recycled content goods of equal quality if:

4 (a) the bid price of no resident  
5 manufacturer following application of the preference allowed in  
6 Paragraph (1) of this subsection can be made sufficiently low;  
7 and

8 (b) the lowest bid price of the resident  
9 business when multiplied by a factor of .90 is made lower than  
10 the otherwise low virgin content goods bid price; or

11 (3) a nonresident business or nonresident  
12 manufacturer offering recycled content goods of equal quality  
13 if:

14 (a) the bid price of no resident  
15 business or resident manufacturer following application of the  
16 preference allowed in Paragraph (1) or (2) of this subsection  
17 can be made sufficiently low; and

18 (b) the lowest bid price of a  
19 nonresident offering recycled content goods when multiplied by  
20 a factor of .95 is made lower than the otherwise low virgin  
21 content bid price.

22 I. When bids are received for both recycled content  
23 goods and virgin content goods and the lowest responsible bid  
24 is for recycled content goods offered by a nonresident business  
25 or nonresident manufacturer, the contract shall be awarded to:

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1 (1) a resident manufacturer offering the  
2 lowest bid on recycled content goods of equal quality if the  
3 bid price of the resident manufacturer when multiplied by a  
4 factor of .95 is made lower than the otherwise low recycled  
5 content goods bid price; or

6 (2) a resident business offering a bid on  
7 recycled content goods of equal quality if:

8 (a) the bid price of no resident  
9 manufacturer following application of the preference allowed in  
10 Paragraph (1) of this subsection can be made sufficiently low;  
11 and

12 (b) the lowest bid price of the resident  
13 business when multiplied by a factor of .95 is made lower than  
14 the otherwise low recycled content goods bid price offered by a  
15 nonresident business or manufacturer.

16 J. When bids are received for both recycled content  
17 goods and virgin content goods and the lowest responsible bid  
18 is for recycled content goods offered by a resident business,  
19 the contract shall be awarded to a resident manufacturer  
20 offering the lowest bid on recycled content goods of equal  
21 quality if the bid price of the resident manufacturer when  
22 multiplied by a factor of .95 is made lower than the otherwise  
23 low recycled content goods bid price.

24 K. This section shall not apply when the  
25 expenditure of federal funds designated for a specific purchase

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1 is involved or for any bid price greater than five million  
2 dollars (\$5,000,000).

3 L. The provisions of this section shall not apply  
4 to the purchase of buses from a resident manufacturer or a New  
5 Mexico resident business that manufactures buses in New Mexico.  
6 It is the purpose of this subsection to:

7 (1) allow any bus manufacturer or business  
8 that manufactures buses to compete openly for public  
9 procurement contracts in New Mexico without giving preference  
10 to a business based on the location of the place of manufacture  
11 of the buses;

12 (2) give resident manufacturers and New Mexico  
13 resident businesses that manufacture buses an equal opportunity  
14 to sell their buses in states that have reciprocal preference  
15 laws; and

16 (3) eliminate all different treatment of any  
17 kind under New Mexico law and by all political jurisdictions in  
18 the state between New Mexico resident businesses and  
19 manufacturers that manufacture buses and businesses in other  
20 states that manufacture and sell buses.

21 M When bids are received from a disadvantaged  
22 small business and the lowest responsible bid is from a  
23 nonresident business or a resident business that is not a  
24 disadvantaged small business, the contract shall be awarded to  
25 the disadvantaged small business whose bid is nearest to the

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1 otherwise low bidder if the bid price of the disadvantaged  
2 small business is made lower than the bid price of the  
3 otherwise low bidder when multiplied by a factor of .80."

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